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Attorneys for Plaintiff and the Proposed Classes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DIVA LIMOUSINE, LTD., individually and
on behalf of all others similarly situated,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., et al.,

Defendants.

No. 3:18-cv-05546-EMC

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: November 15, 2018
Time: 1:30 p.m.
Location: Courtroom 5
Judge: Hon. Edward M. Chen

REQUEST FOR JUDICIAL NOTICE

Plaintiff Diva Limousine, Ltd. requests that the Court take judicial notice of all facts and matters properly noticed in and from the exhibits described below pursuant to Federal Rule of Evidence 201, as more specifically set forth in the memorandum filed herewith that.

Courts may take judicial notice of facts “not subject to reasonable dispute” that are “generally known within the trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court may take judicial notice at summary judgment, or at any other stage of the proceeding. Fed. R. Evid. 201(d); *Van v. Language Line Servs*, No. 14-CV-03791-LHK, 2016 U.S. Dist. LEXIS 73510, at *20 (N.D. Cal. June 6, 2016).

The “proper subjects of judicial notice” include “public court records,” a “court’s own records,” and “records of administrative bodies.” *Id.* (citing *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (public court records, including pleadings and hearing transcripts); *United States v. Author Servs., Inc.*, 804 F.2d 1520, 1523 (9th Cir. 1986) (court’s own records), *overruled on other grounds by United States v. Jose*, 131 F.3d 1325 (9th Cir. 1997) (en banc); *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (records of administrative bodies). Judicial notice is also “appropriate” where information is “made publicly available by government entities” on their websites. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).

Further, “notice is properly taken of orders and decisions made by...administrative agencies.” *Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203, 207, n.5 (9th Cir. 1995), *rev’d on other grounds*, 520 U.S. 548 (1997). This specifically includes Industrial Wage Orders of the Industrial Welfare Commission (IWC). *Chavez v. Air Prods. & Chems. Inc.*, No. CV 14-06360, 2016 U.S. Dist. LEXIS 189276, at *15, (C.D. Cal. Feb. 24, 2016) (“Industrial Wage Orders of the California IWC can be judicially noticed.”) (quoting *Vasserman v. Henry Mayo Newhall Mem’l Hosp.*, 65 F. Supp. 3d 932, 943-44 (C.D. Cal. 2014)). Decisions and orders by the California Public Utilities Commission are also appropriately the subject of judicial notice. *See Henricks v. Cal. PUC*, No. 17-cv-2177, 2018 U.S. Dist. LEXIS 84182, at *9 (S.D. Cal. May 17,

2018) (citing *W. Radio Servs. Co. v. Qwest Corp.*, 530 F.3d 1186, 1192 n.4 (9th Cir. 2008)).

The exhibits listed below are those exhibits referenced in Plaintiff's Motion for Partial Summary Judgment and the Declaration of Tom Kayes for which Plaintiff is seeking judicial notice. Therefore, Plaintiff respectfully requests that the Court take judicial notice of all facts and matters properly noticed in and from the following exhibits for the reasons set forth below and as more specifically set forth in the memorandum filed herewith that:

Exhibit	Description of Document	Basis for Judicial Notice
6	Term Sheet for Settlement Between the Safety and Enforcement Division of the California Public Utilities Commission and Uber Technologies, Inc. (Case PSG-3018, Citation 5-5195), filed as dkt. 52-3 in <i>Overton et al. v. Uber Technologies, Inc., et al.</i> , No. 18-cv-02166 (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records Courts may take judicial notice of records of administrative bodies
7	"Uber: Everyone's Private Driver," Exhibit 3 to the 7/9/14 Deposition of Michael Colman, filed as dkt. 223-3 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records
8	"PARTNERS: Uber SF Onboarding Script," filed as dkt. 223-6 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records
11	2/6/13 Email from Uber to D. O'Connor re: Uber Quality & Evaluation Changes, filed as dkt. 223-29 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records
17	Uber Payment Statement, filed as dkt. 223-62 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records

18	7/9/14 Rule 30(b)(6) Deposition of Uber Technologies, Inc. (by Michael Colman), filed as dkt. 223-2 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records
19	9/14/14 Email from Uber to E. Gurfinkel re: Pricing, filed as dkt. 223-38 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records
20	Transportation Provider Service Agreement, filed as dkt. 223-15 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records
22	Driver Addendum Related to Uber Services, filed as dkt. 223-16 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court's own records Courts may take judicial notice of public court records
23	Response of Uber Technologies, Inc. to Administrative Law Judge Robert M. Mason III's Ruling Dated September 17, 2015, filed in Rulemaking 12-12-011 on September 24, 2015, available at http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K652/154652254.PDF (last accessed: Oct. 5, 2018)	<ul style="list-style-type: none"> Courts may take judicial notice of records of administrative bodies Courts may take judicial notice of information contained in government websites or documents
28	Internet Print-Out Reflecting Uber's Certificates and Permits under the California Public Utilities Commission, available at https://apps.cpuc.ca.gov/apex/f?p=203:35:0::NO:35:: (search for "Carrier ID" 38150) (last visited: Oct. 5, 2018)	<ul style="list-style-type: none"> Courts may take judicial notice of records of administrative bodies Courts may take judicial notice of information contained in government websites or documents
29	Internet Print-Out Reflecting UTAC's Certificates and Permits under the California Public Utilities Commission, available at https://apps.cpuc.ca.gov/apex/f?p=203:35:0::NO:35::	<ul style="list-style-type: none"> Courts may take judicial notice of records of administrative bodies

	(search for “Carrier ID” 37432) (last visited: Oct. 5, 2018)	<ul style="list-style-type: none"> Courts may take judicial notice of information contained in government websites or documents
30	Rasier-CA LLC’s Current CPUC-Issued TNC Permit, available at http://cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Transportation_Network_Companies/Rasier%20EXP2020.pdf (last accessed: Oct. 5, 2018)	<ul style="list-style-type: none"> Courts may take judicial notice of records of administrative bodies Courts may take judicial notice of information contained in government websites or documents
32	Declaration of Michael Colman in Support of Defendant’s Motion to Compel Arbitration as to Certain Absent Class Members, filed as dkt. 347 in <i>O’Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court’s own records Courts may take judicial notice of public court records
33	Decision on Phase III.B Tracks II and IV Issues: Is Uber Technologies, Inc., a Transportation Network Company and/or a Charter Party Carrier, issued by the CPUC on May 4, 2018, Rulemaking 12-12-011, Decision 18-04-005, available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M213/K904/213904057.PDF	<ul style="list-style-type: none"> Courts may take judicial notice of orders and decisions of administrative agencies Courts may take judicial notice of information contained in government websites or documents
37	Uber Driver Guidelines, filed as dkt. 223-20 in <i>O’Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court’s own records Courts may take judicial notice of public court records
38	Driver Application Information, filed as dkt. 223-28 in <i>O’Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	<ul style="list-style-type: none"> Courts may take judicial notice of a court’s own records Courts may take judicial notice of public court records
39	Industrial Welfare Commission Wage Order No. 9-2001 (Transportation Industry) available at https://www.dir.ca.gov/iwc/wageorderindustries.htm (last visited: Oct. 5, 2018)	<ul style="list-style-type: none"> Courts may take judicial notice of orders and decisions of administrative

		agencies <ul style="list-style-type: none"> • Courts may take judicial notice of information contained in government websites or documents
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Dated: October 5, 2018

Respectfully submitted,

/s/ Tom Kayes

Tom Kayes

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*Counsel for Plaintiff Diva Limousine, Ltd., and
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CERTIFICATE OF SERVICE

I certify that on October 5, 2018, I served this document on all ECF-registered counsel via the Court's CM/ECF system.

/s/ Tom Kayes
Tom Kayes

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